

# House Bill 2942

Sponsored by Representative HOLVEY

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Creates income tax credit for anaerobic digester production of energy from food processing residues, calculated based on tipping fees paid to disposal sites. Directs Department of Environmental Quality to certify taxpayers as eligible for credit.

Applies to tax years beginning on or after January 1, 2016, and before January 1, 2022.

Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

1  
2 Relating to a tax credit for anaerobic digesters; creating new provisions; amending ORS 314.752 and  
3 318.031; and prescribing an effective date.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1. Section 2 of this 2015 Act is added to and made a part of ORS chapter 315.**

6 **SECTION 2. (1) As used in this section:**

7 (a) **"Anaerobic digester" means an apparatus that generates energy primarily through**  
8 **the processing of food processing residues.**

9 (b) **"Food processing residues" means organic wastes that result from the transformation**  
10 **of plants or animals into food. "Food processing residues" does not include used cooking oil,**  
11 **waste grease, rendering offal, tallow, oilseeds or oilseed processing residue.**

12 (2) **A credit against taxes that are otherwise due under ORS chapter 316 or, if the tax-**  
13 **payer is a corporation, under ORS chapter 317 or 318 is allowed to an owner or operator of**  
14 **an anaerobic digester for the payment of fees for disposal, at disposal sites that receive solid**  
15 **waste, of post-consumer food waste or food processing residues transported from the**  
16 **anaerobic digester.**

17 (3) **The amount of the credit allowed under this section shall equal 50 percent of fees paid**  
18 **under ORS 459A.110 to disposal sites that receive solid waste by the owner or operator of the**  
19 **anaerobic digester during the tax year, but may not exceed \$75,000 for the tax year.**

20 (4) **Prior to claiming the credit allowed under this section, an owner or operator is re-**  
21 **quired to receive written certification of eligibility from the Department of Environmental**  
22 **Quality. The department may establish by rule procedures and criteria for determining the**  
23 **amount of the tax credit to be certified under this section. The department shall provide**  
24 **written certification to taxpayers that are eligible to claim the credit under this section.**

25 (5) **A credit may not be claimed under this section for:**

26 (a) **Energy production utilizing biomass for which a credit is claimed under ORS 315.141;**

27 **or**

28 (b) **Use of an anaerobic digester for which a grant has been awarded under ORS 469B.256**  
29 **within the previous 12 months.**

30 (6) **The credit allowed under this section may not exceed the tax liability of the taxpayer**

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 for the tax year.

2 (7) A nonresident shall be allowed the credit under this section. The credit shall be  
3 computed in the same manner and be subject to the same limitations as the credit granted  
4 to a resident. However, the credit shall be prorated using the proportion provided in ORS  
5 316.117.

6 (8) If a change in the taxable year of the taxpayer occurs as described in ORS 314.085,  
7 or if the Department of Revenue terminates the taxpayer's taxable year under ORS 314.440,  
8 the credit allowed by this section shall be prorated or computed in a manner consistent with  
9 ORS 314.085.

10 (9) If a change in the status of a taxpayer from resident to nonresident or from nonres-  
11 ident to resident occurs, the credit allowed by this section shall be determined in a manner  
12 consistent with ORS 316.117.

13 (10) The Department of Environmental Quality, after consultation with the State De-  
14 partment of Energy, shall adopt rules for the purposes of this section.

15 **SECTION 3.** ORS 314.752 is amended to read:

16 314.752. (1) Except as provided in ORS 314.740 (5)(b), the tax credits allowed or allowable to a  
17 C corporation for purposes of ORS chapter 317 or 318 shall not be allowed to an S corporation. The  
18 business tax credits allowed or allowable for purposes of ORS chapter 316 shall be allowed or are  
19 allowable to the shareholders of the S corporation.

20 (2) In determining the tax imposed under ORS chapter 316, as provided under ORS 314.734, on  
21 income of the shareholder of an S corporation, there shall be taken into account the shareholder's  
22 pro rata share of business tax credit (or item thereof) that would be allowed to the corporation (but  
23 for subsection (1) of this section) or recapture or recovery thereof. The credit (or item thereof), re-  
24 capture or recovery shall be passed through to shareholders in pro rata shares as determined in the  
25 manner prescribed under section 1377(a) of the Internal Revenue Code.

26 (3) The character of any item included in a shareholder's pro rata share under subsection (2)  
27 of this section shall be determined as if such item were realized directly from the source from which  
28 realized by the corporation, or incurred in the same manner as incurred by the corporation.

29 (4) If the shareholder is a nonresident and there is a requirement applicable for the business tax  
30 credit that in the case of a nonresident the credit be allowed in the proportion provided in ORS  
31 316.117, then that provision shall apply to the nonresident shareholder.

32 (5) As used in this section, "business tax credit" means a tax credit granted to personal income  
33 taxpayers to encourage certain investment, to create employment, economic opportunity or incentive  
34 or for charitable, educational, scientific, literary or public purposes that is listed under this sub-  
35 section as a business tax credit or is designated as a business tax credit by law or by the Depart-  
36 ment of Revenue by rule and includes but is not limited to the following credits: ORS 285C.309  
37 (tribal taxes on reservation enterprise zones and reservation partnership zones), ORS 315.104 (fore-  
38 station and reforestation), ORS 315.138 (fish screening, by-pass devices, fishways), ORS 315.141  
39 (biomass production for biofuel), ORS 315.156 (crop gleaning), ORS 315.164 and 315.169 (agriculture  
40 workforce housing), ORS 315.204 (dependent care assistance), ORS 315.208 (dependent care facili-  
41 ties), ORS 315.213 (contributions for child care), ORS 315.304 (pollution control facility), ORS 315.326  
42 (renewable energy development contributions), ORS 315.331 (energy conservation projects), ORS  
43 315.336 (transportation projects), ORS 315.341 (renewable energy resource equipment manufacturing  
44 facilities), ORS 315.354 and 469B.151 (energy conservation facilities), ORS 315.507 (electronic com-  
45 merce), ORS 315.533 (low income community jobs initiative) and ORS 317.115 (fueling stations nec-

1 essary to operate an alternative fuel vehicle) **and section 2 of this 2015 Act (anaerobic**  
2 **digesters).**

3 **SECTION 4.** ORS 318.031 is amended to read:

4 318.031. It being the intention of the Legislative Assembly that this chapter and ORS chapter  
5 317 shall be administered as uniformly as possible (allowance being made for the difference in im-  
6 position of the taxes), ORS 305.140 and 305.150, ORS chapter 314 and the following sections are in-  
7 corporated into and made a part of this chapter: ORS 285C.309, 315.104, 315.141, 315.156, 315.204,  
8 315.208, 315.213, 315.304, 315.326, 315.331, 315.336, 315.507 and 315.533 **and section 2 of this 2015**  
9 **Act** (all only to the extent applicable to a corporation) and ORS chapter 317.

10 **SECTION 5.** **Section 2 of this 2015 Act and the amendments to ORS 314.752 and 318.031**  
11 **by sections 3 and 4 of this 2015 Act apply to tax years beginning on or after January 1, 2016,**  
12 **and before January 1, 2022.**

13 **SECTION 6.** **This 2015 Act takes effect on the 91st day after the date on which the 2015**  
14 **regular session of the Seventy-eighth Legislative Assembly adjourns sine die.**

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